

REMARKS/ARGUMENTS

Claims 13, 24-30, 40 and 41 are pending. Claims 13, 24-30, and 41 are withdrawn.

Claim 40 is rejected.

Applicants' amendment and response is believed to put the application in complete condition for allowance. Thus, the Examiner's reconsideration is respectfully requested. Briefly, applicants have amended claim 40 to reflect the amendment, as discussed with the Examiner during the interview of December 6, 2002, namely, an *in vivo* administrable pharmaceutically acceptable formulation of the composition. Applicants also include as part of this Amendment the Declaration of Dr. Rajagopalan, an inventor, which addresses the Examiner's basis of rejection. The amended claim is fully supported in the application as filed; no new matter has been added.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claim 40 is rejected under 35 U.S.C. § 102(b) as anticipated by each of Pochinok, Ol'shevskaya, Clecak, and Leung. Applicants respectfully disagree.

Claim 40 has been amended to further clarify that the dye-azide is a pharmaceutically acceptable formulation in an *in vivo* administrable form. None of Pochinok, Ol'shevskaya, Clecak, and Leung disclose a pharmaceutically acceptable formulation of organic azides in an *in vivo* administrable form. The Examiner refers to the specification to define "a pharmaceutically acceptable formulation," stating that it could be the compound alone formulated for oral administration in the compound *per se* ("a pharmaceutically acceptable formulation") put directly on the skin.

The Examiner, however, takes compounds disclosed in the cited references, such as DMSO, lower alcohol, and aqueous buffer, as rendering the composition a pharmaceutically acceptable formulation. However, the compositions of Leung, Pochinok, Ol'shevskaya, and Clecak cannot be read as pharmaceutically acceptable formulations because none is contacted with the body.

As known by one skilled in the art, a pharmaceutically acceptable formulation is one that is to be administered to an animal or human with an optimal bioavailability of the active compound *in vivo*, maximal chemical and physical stability of the active compound *in vitro* or *in vivo* and on the technical feasibility of producing the formulation containing the active compound. Applicants have also submitted with this Amendment a Declaration by Dr. Rajagopalan, an inventor of this application, directed to the formulations of the inventive compositions as pharmaceutically acceptable formulations.

For these reasons, applicants respectfully assert that the rejection is improper and request that the rejection be withdrawn.

CONCLUSION

For the foregoing reasons, applicants submit that claim 40 is patentable and a Notice of Allowance is respectfully requested.

Applicants do not believe that any fees are due in connection with this Amendment. However, should any additional fees or surcharges be deemed necessary, the Examiner has authorization to charge fees or credit any overpayment to Deposit Account No. 23-3000.

The Examiner is invited to contact the undersigned attorney with any questions or remaining issues.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By: Beverly A. Lyman
Beverly A. Lyman, Ph.D.
Reg. No. 41,961

Wood, Herron & Evans, L.L.P.
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202
(513) 241-2324 - voice
(513) 421-7269 - facsimile